Thursday 22 May 2008

PROGRESS TOWARDS SOME TEXT SOLUTIONS

Thursday 22 May 2008, the fourth day of the Dublin Conference, states continued to clarify their positions on definitions and interoperability, and moved towards concluding the first round of negotiations on other issues such as victim assistance, stockpile destruction, and clearance. For definitions and interoperability, the contentious issues of the day, several states began to lay down “red lines” and it appears that the real negotiation is about to begin. In a significant session on definitions, states aligned themselves around a new proposal for an exclusion under Article 2(c) and a proposal to delete Article 2(c) entirely. Friend of the President Ambassador MacKay introduced a discussion paper, building on and strengthening the cumulative criteria required for the exclusion of certain weapons as contained in Norway’s proposal from yesterday. Most importantly the discussion paper introduces an effects-based approach to link the technical criteria to the actual effects of cluster munitions. The paper adds a requirement that a munition must have less than 10 submunitions. Australia, Canada, France, Germany, the Netherlands, Portugal, the ICRC, and UNMAS were supportive of the Friend of the President’s proposal. Germany stated that if the cumulative criteria approach to 2(c) used in the paper was taken off the table, it would not be able to sign the Treaty. Canada, however, proposed deleting the criteria of a specific limited number of submunitions and the minimum weight limit of 5 kilograms. The Netherlands and Portugal supported Canada’s proposal. Australia agreed that the criteria should be cumulative, but stated it would prefer including only three out of the five listed. On the other hand, Finland objected to the proposal outright. Japan, South Africa, Slovakia, Spain, and Switzerland also did not appear to support the proposal, often citing weight and limiting the number of submunitions as areas of concern.

Denmark stated it could be “flexible” about the content of 2(c), but insisted that 2(c) be retained, while the UK continued to call for the inclusion of direct fire as a criterion and reiterated its call for a transition period. Argentina introduced a proposal to delete Article 2(c), co-sponsored by Costa Rica, Ecuador, Guatemala, Lebanon, Mexico, Palau, and Uruguay. 12 states—Austria, Benin, Ghana, Guinea, Honduras, Lesotho, Madagascar, Mauritania, Morocco, Nigeria, Tanzania, Uganda, and Zambia—endorsed the proposal, bringing the total to 21 States calling for the deletion of the article. The CMC fully supported the proposal and appreciated the work of Ambassador Mackay to ensure an effects-based approach and a prohibition on cluster munitions as an entire category of weapons with no exclusions for weapons that have the effects of cluster munitions. As a result of these discussions, Friend of the Chair MacKay intends to give a revised
text to the President, to be discussed tomorrow in the Committee of the Whole. Informal discussions on interoperability were more contentious. Friend of the President Ambassador Schraner Burgener circulated a discussion paper for an additional article on interoperability that, if adopted, would completely undermine the prohibition on assistance (and the fundamental purpose) of the Treaty. In practical terms, the proposal permits States to willingly and intentionally engage in any sort of activity with Non-States Parties relating to the use, transfer, and storage of cluster munitions—just short of actually using cluster munitions themselves. Australia, Canada, Croatia, the Czech Republic, Denmark, Fiji, France, Germany, Hungary, Italy, Japan, Morocco, the Netherlands, New Zealand, and the UK supported the proposal with varying degrees of enthusiasm. Australia, Canada, Japan, the Netherlands, and the United Kingdom were the staunchest supporters of the proposal indicating their support for the convention would be conditional upon it. Around a dozen countries rejected the Article or raised concerns about the giant loophole it would create in the Treaty. As discussions continued in a small representative group of delegations, neither side appeared to be willing to compromise. One possible solution, suggested by the ICRC, might be an “opt-in” provision, wherein States with interoperability concerns would have the option of making a declaration upon signing the Treaty that their military personnel would not be criminally liable if in extraordinary circumstances they violated the prohibition on assistance. In contrast, informal discussions on Article 4 on clearance were largely positive. Ireland, as Friend of the President, introduced a revised text which contains many CMC suggestions and improved provisions on extension requests, proposed by Canada. Very encouragingly for the CMC, Article 4.4 on the responsibility of past users of cluster munitions was not deleted from the article. 10 countries spoke in favor of the obligation, and while Australia, Canada, France, Germany, and the United Kingdom cited they had concerns with the article, they did not call for it to be removed. The minimum deadline for clearance, however, was changed from 5 years to 10 years. The CMC intervened against this. If States refuse to return to the originally proposed deadline, it is imperative that additional obligations for annual reporting on clearance activities be included in Article 7, to ensure that States do not delay clearance activities. While no informal session was held today on storage and stockpile destruction, a revised draft of Article 3 was circulated amongst delegations. Unfortunately, the revised draft also increased the minimum deadline for stockpile destruction, from 6 to 8 years. The change was the result of pressure from the UK and France, who are looking to ensure a maximum amount of time to destroy the weapons in their stockpiles that will be prohibited. Informal discussions on victim assistance concluded successfully today and a revised text will be sent to the Committee of the Whole for final consideration. A high
point of the day, campaigners felt confident that Article 5 will create a new standard for victim assistance in international humanitarian law. Brief informal discussions took place on Article 8 on compliance. 13 States, including South Africa, as Friend of the President, and UNMAS and the CMC participated in discussions. The text of Article 8 was shortened considerably. The CMC recommended that mechanisms for facilitating verification and determining instances of non-compliance should be elaborated now and included in the text. In the Committee of the Whole, discussions continued on the remaining articles of the treaty, the majority of which are now Presidency Texts. A proposal for a new article called the “Relationship with Other International Agreements” was submitted by Australia, Canada, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, and the United Kingdom. The Article states that “the Convention shall be considered as complementary to any existing international agreement binding on the Parties.” While seemingly innocuous, the article may essentially be “interoperability in sheep’s clothing” and possibly intended as a way to ensure that a loophole for interoperability remains in the treaty if the primary proposal on interoperability is rejected. Not surprisingly, all of the States who sponsored the article are amongst the biggest supporters of the Friend of the President’s informal proposal on interoperability. Positively, 17 countries spoke against the article. Also during the Committee of the Whole, the UK supported proposals for a new article on a transition period. The CMC made a strong intervention opposing this. Transition periods will be discussed again in the Committee of the Whole tomorrow morning at 10 am. NGO activities began early for many dedicated CMC campaigners. At 7 am, campaigners lay down in the middle of a busy commercial street in Dublin, to graphically represent the victims of a cluster munitions strike for a publicity photo. At lunchtime, Titus Peachey and Virgil Wiebe of the Mennonite Central Committee presented a debate on “lessons learned from the 1970s effort to ban cluster bombs,” followed by a talk on “working with youth to promote the clusters treaty” given by the Brazilian Campaign, Mines Action Canada and SPADO. The UNDP sponsored a briefing with Colin King and Chris Clark answering questions on technical issues related to definitions. With translations in Spanish and French, this was an attempt to remedy the fact that translation is not provided for delegates in the informal sessions on definitions and interoperability. The lack of translation is seriously hindering many non-native English speaking delegations from taking part in the negotiations. (And the technical discussions are difficult enough to follow, even with English as a first language.) Having gathered early in the morning to stage a protest by lying down in the streets of central Dublin, campaigners wrapped up a long day by attending a public film screening of the NPA film “Yellow Killers” on the humanitarian impact of the use of cluster munitions in Serbia.